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IN THE

Supreme Court of the United States

October Term, 1973

No. 73-461

SOPHIE M. GRABOWSKI, individually, as personal representative of the deceased, EDWIN T. GRABOWSKI, and as guardian of the estate of the minor children of EDWIN T. GRABOWSKI,
Petitioner,

v.

NORTHERN FISHING & TRADING COMPANY, INC., a corporation, owners of the fishing vessel NORTH SEA, and ALEUTIAN KING CRAB, INC., a corporation, charterer of the fishing vessel NORTH SEA, who herein petitions for exoneration from or limitation of liability,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF OF PETITIONER

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SUBJECT INDEX

Page

Reply to Respondent's Brief in Opposition 1

Conclusion 4

TABLE OF AUTHORITIES

Table of Cases

In *re Marine Sulphur Queen*,
312 F. Supp. 1081 (1970) 2-3

Walker v. Harris, 335 F.2d 185 (5th Cir. 1964) 2

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REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

The Respondent's Brief, hereinafter referred to as (Resp. Br.), page 4, 8, suggests to this Court that no vessel, seaworthy or not, could have withstood this storm by inferring the vessel was lost as a result of wind of 180 miles per hour.

Those were not the findings of the trial court nor the evidence, nor the facts.

The winds actually recorded by the weather bureau, approximately nine miles from the site of the loss, showed that the recorded winds at the time of the loss, were approximately 50 to 60 miles per hour. The fishing vessel *"Sidney"* rode out the same storm.

The Respondent attempts to distinguish the holding of the Ninth Circuit in the instant case from the rule of the Fifth Circuit, *Walker v. Harris*, 335 F.2d 185 (5th Cir. 1964), by arguing (Resp. Br. 11), that it was not expected by the owners that the *"North Sea"* would operate under the subject weather conditions. This conclusion is not in the findings of the trial court nor in the record and is a logical impossibility.

The Findings of Fact show that both fishing vessels, the *"Sidney"* and the *"North Sea,"* had to leave the shelter of Urilla Bay because the wind changed direction and the bay no longer offered shelter from the storm. There was no place of shelter available, except another bay and to get there, it had to be exposed to the storm.

It is impossible to directly contrast the relative severity of the storm experienced by the *"North Sea"* and the *"Sidney,"* because at the time of the loss, they were approximately 60 miles apart. There was not a scintilla of evidence that the storm, as experienced by the *"North Sea"* was either equal to or greater than that experienced by the *"Sidney."*

There is a conflict between the circuits, and the trial court commented on the conflict In re Marine Sulphur Queen, 312 F. Supp. 1081 (1970) at 1098:

> ". . . Relying on *Admiral Towing Co. v. Woolsen*, the Court in Walston [9th Cir.] expounded the nature of the permissible presumption in a case like this as fol-

> lows: '. . . If a claimant establishes that a vessel is unseaworthy, the trial court may presume that the unseaworthiness was the proximate cause of the sinking, . . . [This] presumption . . . has been indulged only when the claimant has been able to establish to the satisfaction of the trial court that the vessel was unseaworthy at the time it departed on its last voyage."
>
> "The rule in *this Second Circuit permits the presumption of causation. It may also encompass the existence of unseaworthiness as well."*
> (Emphasis added)

The Circuit Court in the instant opinion, Petition for Writ of Certiorari, Appendix 8, 9, reviewed the evidence relative to the fact that there were rotting planks and teredo holes in the *"North Sea."*

The appellate court held the Petitioner was not able to sustain burden of proof by a preponderance of the evidence that the evidence of deficiencies in the vessel made it, in fact, unseaworthy, and that the aforesaid deficiencies proximately caused the loss.

The Respondent argues to this Court that there is no conflict.

That is not the conclusion of the trial court cited above; is not the opinion of the several other claimant's counsel who have applied for certiorari; is not the opinion of the trial bar as evidenced by the interest of the American Trial Lawyers as Amicus Curiae; and, is contrary to the fact.

CONCLUSION

The Petitioner, Sophie M. Grabowski, reiterates her prayer for relief that the Writ of Certiorari issue to the Ninth Circuit.

Respectfully submitted,

GALE P. HILYER, JR.
Attorney for Petitioner